

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ORIGINAL

74-2596

MILDRED F. WOLF and HARRY WOLF,

Plaintiffs-Appellees,

-against-

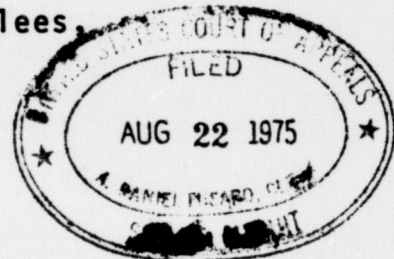
INTERNATIONAL FOODS, a division of
International Industries, Inc.,

Defendant,

-and-

CHARLES KRAMER and HENRY H. DILLOF,
individually and as co-partners
practicing law under the firm
name and style of KRAMER & DILLOF,

Defendants-Appellants.



ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPELLANTS' APPENDIX

(Cover Page 1)

4

PAGINATION AS IN ORIGINAL COPY

D'AMATO, COSTELLO & SHEA
Attorneys for Defendants-
Appellants
Office & P.O. Address
116 John Street
New York, New York 10038
Telephone: (212) 791-1500

GREENBAUM, WOLFF & ERNST
Attorneys for Plaintiffs-
Appellees
Office & P.O. Address
437 Madison Avenue
New York, New York 10022
Telephone: (212) 758-4010

INDEX TO APPENDIX

	<u>PAGE</u>
Docket Entries	1a
Summons	5a
Complaint	7a
Answer of Charles Kramer and Henry Dillof	16a
Answer of International Foods	21a
Amended Answer of International Foods ...	25a
Notice of Motion	30a
Motion to Bring in Third-Party Defendant	33a
Affidavit of Anthony A. Madison Sworn to July 10, 1974 - In Support of Motion	35a
<u>Exhibits Annexed to Motion</u>	
Exhibit A - Proposed Third-Party Summons	38a
Exhibit A - Proposed Third-Party Complaint	39a
Affidavit of Robert Bryant Hunting Sworn to August 30, 1974 - In Opposition to Motion	43a
Order and Decision Appealed From	49a
Notice of Appeal	50a

DOCKET ENTRIES

CIVIL DOCKET UNITED STATES DISTRICT COURT

JUDGE BONSAI

Jury demand date: (Pltff 3-15-74) 74 CIV 1237

TITLE OF CASE	ATTORNEYS
	For plaintiff:
MILDRED F. WOLF and HARRY WOLF,	Greenbaum, Wolff & Ernst 437-Mad.Ave.,NYC-10022-758-4010
-against-	
INTERNATIONAL FOODS, A DIVISION OF INTERNATIONAL INDUSTRIES, INC., and CHARLES KRAMER and HENRY H. DILLOF, individually and as co- partners practicing law under the firm name and style of KRAMER & DILLOF,	
	For defendant:
	D'Amato, Costello & Shea 116 John St, NYC 10038 Ba 7-5189. for C. Kramer and H. Dillof.
	Kroll, Edelman, Elser & Wilson 72 East 40th St. N.Y. 10016 MU 6-268 (deft. Intl Industries)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk	3/19/74	Greenbaum	15	
J.S. 6 mailed	Marshal	3/19/74	Greenbaum	15	
Basis of Action: Pers. Injury	Docket fee				
\$115,000.00	Witness fees				
Action arose at:	Depositions				

DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>	
Mar. 15-74	Filed complaint and issued summons.	
Apr. 5-74	Filed summons with marshals return. served: International Foods by T.H. Buanbaum on 3-22-74. Charles Kramer by B.K.Stuart on 3-27-74 Henry H. Dillof by his wife on 4-1-74	
May 2-74	Filed pltffs' first set of interrogs. to defts. Chas. Kramer and Henry H. Dillof, individually and as co-partners practicing law as the firm Kramer & Dillof.	
May 13-74	Filed ANSWER of C. Kramer and H. Killof to the complaint	DC&S
May 13-74	Filed defts' interrogs. to pltffs.	
May 13-74	Filed defts' notice to take deposition of pltffs.	
May 15-74	Filed AMENDED ANSWER to complaint by deft. Inter's Foods.	KEE&W
Jun 10-74	Filed deft's International Foods memor- andum in support of motion for summary judgment.	
June 10-74	Filed deft's affidavit & notice of motion for summary judgment ret. 6-17-74.	
June 10-74	Filed ANSWER to complaint by deft. Inter- national Industries.	KEE&W
June 10-74	Filed deft's Intl. Industries notice to take deposition of pltff's.	
June 18-74	Files stip & order that time of deft's Kramer & Dillof to respond, to pltff's interrogs is ext. to 7-5-74. Bonsal, J.	

DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
June 17-74	Filed stip & order that deft's International Industries motion ret. 6-17-74 is adj. until 6-24-74. Bonsal, J.
June 24-74	Filed Memo-endorsed on deft's Int'l motion filed 6-10-74 for summary judgment: Motion granted-Atty for pltff. appeared & did not oppose. Settle order on notice. Bonsal, J.
Jul 3-74	Filed deft's Charles Kramer & H.H. Dillof answers to pltff's interrogs.
Jul 16-74	Filed deft's & 3rd pty. pltff's affidavit & notice of motion to bring, in third party deft. ret. 9-3-74.
Jul 15-74	Filed pltff's answers to interrogs of deft's/
Jul 22-74	Filed pltff's Cross Notice of Settlement of Order ret. 7-23-74.
Jul 22-74	Filed pltff's Memorandum
Jul 30-74	Filed ORDER that the motion of deft International Foods is granted that the complaint is dismissed as against the movant by reason of the expiration of the applicable statutes of limitations, etc. Bonsal, J. Judgment entered Clerk 7-30-74.
Aug 6-74	Filed pltff's notice of entry of order dated 7-30-74.
Jul 19-74	PRE-TRIAL CONFERENCE HELD BEFORE BONSALE, J.
Nov. 14-74	Filed affidavit of R. B. Hunting in opposition to deft's & 3rd. pty. pltffs' motion filed 7-16-74.

DOCKET ENTRIES

DATE

PROCEEDINGS

- Nov. 14-74 Filed Memo-Endorsed or motion filed on 7-16-74 by deft's & 3rd. pty. plttf's; Motion to bring in Greenbaum, Wolff & Ernst as a third pty. deft. is denied. So ordered. Bonsal, J. m/n
- Dec. 2-74 Filed deft's (C. Kramer & H.H. Dillof & Kramer & Dillof) Notice of appeal to the USCA from order of Bonsal, J. entered 11-14-74. Mailed copies to Greenbaum, Wolff & Ernst & Kroll, Edelman, Elser & Wilson.
- Dec. 5-74 Filed plttfs' Notice of entry of order & true copy of memo endorsed dated 11-14-74.
- Jan 22-75 Filed notice that record on appeal has been certified & Transmitted to the USCA on this 22nd day of Jan. 1975.
- Feb. 14-75 Filed defts. Charles Kramer & Henry H. Dillof's Description of parts of transcript to be included in record and statement of issues.

SUMMONS

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

JUDGE BONSAL - 74 CIV 1237

MILDRED F. WOLF and HARRY WOLF,
Plaintiffs,

v.

INTERNATIONAL FOODS, A DIVISION OF
INTERNATIONAL INDUSTRIES, INC., and
CHARLES KRAMER and HENRY H. DILLOF,
individually and as co-partners
practicing law under the firm name
and style of KRAMER & DILLOF,
Defendants.

To the above named Defendants:

You are hereby summoned and required to
serve upon GREENBAUM, WOLFF & ERNST, plaintiff's
attorneys, whose address is 437 Madison Avenue, New
York, N. Y. 10022 an answer to the complaint which
is herewith served upon you, within 20 days after
service of this summons upon you, exclusive of the
day of service. If you fail to do so, judgment by

SUMMONS

default will be taken against you for the relief
demanded in the complaint.

s/ Raymond F. Burghardt
Clerk of Court.

s/ P. McKeey
Deputy Clerk.

Dated: Mar 15 1974

[SEAL OF COURT]

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiffs, MILDRED F. WOLF and HARRY WOLF,
by their attorneys, GREENBAUM, WOLFF & ERNST, for
their complaint herein, respectfully show this Court
and allege upon information and belief:

1. Plaintiffs are each residents of the
State of Florida; defendant INTERNATIONAL FOODS, a
Division of INTERNATIONAL INDUSTRIES, INC. (hereinafter
called INTERNATIONAL FOODS) is a corporation organized
and existing in a state other than the State of Florida
and is doing business in the City, County and State
of New York; and defendants CHARLES KRAMER and HENRY
H. DILLOF, individually and as co-partners practicing
law under the firm name and style of KRAMER & DILLOF
(hereinafter called KRAMER & DILLOF) presently main-
tain an office for the practice of law in the City,
County and State of New York, together with STANLEY
TESSEL under the firm name and style of KRAMER, DILLOF
& TESSEL, and each are residents of the State of New
York, the amount in suit is in excess of \$10,000 and
jurisdiction of this Court is based upon diversity of
citizenship.

COMPLAINT

FIRST COUNT AGAINST INTERNATIONAL FOODS ON BEHALF OF MILDRED F. WOLF

2. On or about October 7, 1968, plaintiff MILDRED F. WOLF, while a customer at a restaurant known as the International House of Pancakes, 1586 Northern Boulevard, Manhasset, New York, owned and operated by the defendant INTERNATIONAL FOODS was served a hamburger sandwich in which a piece of rusty wire was concealed. At that time said defendant was also doing business in the City, County and State of New York.

3. Said plaintiff bit into the hamburger sandwich and broke and damaged some of her teeth as a result of biting the rusty piece of wire concealed therein.

4. Said injuries to said plaintiff were caused solely by the negligence of defendant INTERNATIONAL FOODS and without the fault and negligence of said plaintiff.

5. By reason of the premises, said plaintiff suffered loss of and permanent injury to a number of her teeth, requiring extensive dental work to be done, and was subjected to great pain and suffering.

COMPLAINT

6. By reason of the premises, said plaintiff incurred damages in the sum of \$100,000 for which she seeks recovery from the defendant INTERNATIONAL FOODS.

SECOND COUNT AGAINST INTERNATIONAL FOODS ON BEHALF OF MILDRED F. WOLF

7. Plaintiff MILDRED F. WOLF repeats and realleges each and every allegation contained in paragraph 2 with the same force and effect as if fully set forth herein.

8. Defendant INTERNATIONAL FOODS expressly and impliedly warranted that said hamburger sandwich was of merchantable quality, fit for human consumption and free from any injurious or deleterious substances.

9. Said plaintiff repeats and realleges each and every allegation of paragraphs 3 and 5 with the same force and effect as if fully set forth herein.

10. By reason of the premises, defendant INTERNATIONAL FOODS breached its said warranties to said plaintiff.

11. By reason of the premises, said plaintiff incurred damages in the sum of \$100,000 for which she seeks recovery from the defendant INTERNATIONAL FOODS.

COMPLAINT

THIRD COUNT AGAINST INTERNATIONAL FOODS ON BEHALF OF HARRY WOLF

12. Plaintiff HARRY WOLF repeats and realleges each and every allegation contained in paragraphs 2 thru 11 inclusive, with the same force and effect as if fully set forth herein.

13. That by reason of the foregoing, plaintiff HARRY WOLF was deprived of the services and companionship of his wife, plaintiff MILDRED F. WOLF, and became obligated to expend sums of money for dental attention on her behalf, all to his damage in the sum of \$15,000.

FOURTH COUNT AGAINST KRAMER & DILLOF ON BEHALF OF MILDRED F. WOLF

14. Plaintiff MILDRED F. WOLF repeats and realleges each and every allegation contained in paragraphs 2 thru 11 inclusive, with the same force and effect as if fully set forth herein.

15. At all of the times herein mentioned, CHARLES KRAMER and HENRY H. DILLOF were attorneys at law duly licensed to practice law in the State of New York, and were co-partners practicing law in the City, County and State of New York under the

COMPLAINT

firm name and style of KRAMER & DILLOF.

16. On or about May 21, 1970, plaintiffs employed and retained KRAMER & DILLOF as their attorneys for the purpose of instituting a legal action against INTERNATIONAL FOODS to recover their damages resulting from the occurrences described in the allegations of the First, Second and Third Counts herein, and KRAMER & DILLOF accepted this employment and retainer and agreed to institute such legal action in a proper and skillful manner.

17. In connection with the said retainer and employment of defendants KRAMER & DILLOF, plaintiffs made a full revelation of the facts constituting their causes of action and was advised by defendants KRAMER & DILLOF that each of them had a good and meritorious cause of action against defendant INTERNATIONAL FOODS for the damages sustained as a result of the occurrences alleged in the First, Second and Third Counts herein.

18. After the employment and retainer of defendants KRAMER & DILLOF, and prior to July 26, 1973, plaintiffs were repeatedly informed by defendants KRAMER & DILLOF that the legal action against defendant

COMPLAINT

INTERNATIONAL FOODS on behalf of the plaintiffs was being diligently prosecuted, but that calendar congestion of the court in which it was pending was delaying the trial thereof. Plaintiffs believed and relied upon all these representations.

19. On July 26, 1973, plaintiffs were notified that there had been a negligent failure to institute an action on behalf of the plaintiffs against INTERNATIONAL FOODS and that the statute of limitations at the time of the notification could be asserted as a bar to a recovery in such a suit.

20. The defendants KRAMER & DILLOF have negligently failed to institute any legal action against defendant INTERNATIONAL FOODS, or to take any steps whatever to obtain a recovery for the injuries and losses alleged in the First, Second and Third Counts.

21. If a legal action had been timely commenced against INTERNATIONAL FOODS and had been properly and skillfully prosecuted, plaintiff MILDRED F. WOLF would have recovered a judgment against INTERNATIONAL FOODS of \$100,000 and such a judgment would have been collectible.

COMPLAINT

22. As a result of the foregoing negligence of the defendants KRAMER & DILLOF, plaintiff MILDRED F. WOLF was deprived of the recovery of the sum of \$100,000 against INTERNATIONAL FOODS.

23. By reason of the foregoing negligence of the defendants KRAMER & DILLOF, and without any negligence of the plaintiff MILDRED F. WOLF contributing thereto, said plaintiff has been damaged in the sum of \$100,000, no part of which has been paid, although duly demanded.

FIFTH COUNT AGAINST KRAMER & DILLOF ON BEHALF OF HARRY WOLF

24. Plaintiff HARRY WOLF repeats and re-alleges each and every allegation contained in paragraphs 14, 15, 16, 17, 18, 19 and 20 with the same force and effect as if fully set forth herein.

25. If a legal action had been timely commenced against INTERNATIONAL FOODS and had been properly and skillfully prosecuted, plaintiff HARRY WOLF would have recovered a judgment against defendant INTERNATIONAL FOODS of \$15,000 and such judgment would have been collectible.

COMPLAINT

26. As a result of the foregoing negligence of defendants KRAMER & DILLOF, plaintiff HARRY WOLF was deprived of the recovery of the sum of \$15,000 against defendant INTERNATIONAL FOODS.

27. By reason of the foregoing negligence of the defendants KRAMER & DILLOF, and without any negligence of the plaintiff HARRY WOLF contributing thereto, said plaintiff has been damaged in the sum of \$15,000, no part of which has been paid, although duly demanded.

WHEREFORE, plaintiff MILDRED F. WOLF demands judgment against defendant INTERNATIONAL FOODS in the sum of \$100,000 together with the costs and disbursements of this action and failing such recovery, demands judgment against KRAMER & DILLOF in the sum of \$100,000, together with the costs and disbursements of this action; and plaintiff HARRY WOLF demands judgment against defendant INTERNATIONAL FOODS in the sum of \$15,000 together with the costs and disbursements of this action and failing such recovery, demands judgment against defendants KRAMER & DILLOF in the

COMPLAINT

sum of \$15,000 together with the costs and disbursements of this action.

Dated: New York, N. Y.
March 15, 1974

GREENBAUM, WOLFF & ERNST

By: s/ Roger B. Hunting
(A Member of the Firm)

Attorneys for Plaintiffs
Office & P. O. Address
437 Madison Avenue
New York, N. Y. 10022

ANSWER OF CHARLES KRAMER
AND HENRY H. DILLOF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The Defendants, CHARLES KRAMER and HENRY R. DILLOF, individually and as co-partners of the firm of KRAMER & DILLOF, and KRAMER & DILLOF, by its attorneys D'AMATO, COSTELLO & SHEA, answering the Complaint of the Plaintiff herein respectfully show the court the following:

1. The Defendants deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "1" of the Plaintiffs' Complaint, but denies so much of the allegations as states that the amount in controversy is over Ten Thousand Dollars (\$10,000), and that the jurisdiction of this court is based upon diversity of citizenship; and admits so much of paragraph "1" states that the Defendants CHARLES KRAMER and HENRY H. DILLOF individually and as co-partners practice law under the firm name and style of KRAMER & DILLOF, presently maintain an office for the practice of law in the City and State of New York

ANSWER OF CHARLES KRAMER
AND HENRY H. DILLOF

together with STANLEY TESSEL and r the firm name of KRAMER & TESSEL, and are residents of the State of New York.

ANSWERING THE FIRST CAUSE OF ACTION

2. The Defendants deny any knowledge of information sufficient to form a belief as to each and every allegation contained in paragraphs designated "2", "3" and "4" of the Plaintiffs' Complaint.

3. The Defendants deny each and every allegation contained in paragraphs designated "5" and "6" of the Plaintiffs' Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

4. Answering paragraph "7" of the Plaintiffs' Complaint said Defendants repeat, reiterate and reaffirm each and every denial contained in answers to paragraphs designated "1" through "6" of the Plaintiffs' Complaint, inclusive.

5. Answering paragraph designated "9" of the Plaintiffs' Complaint the Defendants repeat reiterate and reaffirm each and every denial contained in answers to paragraphs designated "1" through "8" of the Plaintiffs' Complaint.

ANSWER OF CHARLES KRAMER
AND HENRY H. DILLOF

The Defendants deny every allegation contained in paragraph designated "11" of the Plaintiffs' Complaint.

7. The Defendants deny any knowledge of information sufficient to form a belief as to each and every allegation contained in paragraphs designated "8" and "10" of the Plaintiffs' Complaint.

ANSWERING THE THIRD CAUSE OF ACTION

8. Answering paragraph designated "12" of the Plaintiffs' Complaint, Defendants repeat, reiterate and reaffirm each and every denial contained in answers to paragraphs designated "1" through "11".

9. The Defendants deny each and every allegation contained in paragraph designated "13" of the Plaintiffs' Complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

10. Answering paragraph designated "14" of the Plaintiffs' Complaint the Defendants, repeat, reiterate and reaffirm each and every denial contained in answers to paragraphs designated "1" through "13", inclusive.

ANSWER OF CHARLES KRAMER
AND HENRY H. DILLOF

11. Answering paragraph designated "15" of the Plaintiffs' Complaint Defendants admit each and every allegation thereof.

12. The Defendants deny each and every allegation contained in paragraphs designated "16", "17", "18", "19", "20", "21", "22", "23" of the Plaintiffs' Complaint.

ANSWERING THE FIFTH CAUSE OF ACTION

13. Answering paragraph designated "24" of the Plaintiffs' Complaint, the Defendants repeat, reiterate and reaffirm each and every denial contained in answers to paragraphs designated "1" through "23" inclusive.

14. The Defendants deny each and every allegation contained in paragraphs designated "25", "26" and "27".

AS AND FOR A FIRST AFFIRMATIVE AND
COMPLETE DEFENSE TO THE CAUSES OF
ACTION OF THE PLAINTIFFS THE
DEFENDANTS ALLEGE:

15. That the action of the plaintiffs is barred by the applicable Statute of Limitations.

ANSWER OF CHARLES KRAMER
AND HENRY H. DILLOF

AS AND FOR A SECOND AFFIRMATIVE
DEFENSE AND COMPLETE DEFENSE TO
THE CAUSES OF ACTION OF THE
PLAINTIFFS THE DEFENDANTS ALLEGE:

16. Prior to the commencement of this action, one Allan White, Esq., satisfied and discharged the alleged claims of the plaintiffs in the total amount of \$7,500.

WHEREFORE, the defendants, CHARLES KRAMER and HENRY H. DILLOF, individually and as co-partners of the firm of KRAMER & DILLOF, and KRAMER & DILLOF, demand judgment dismissing the Plaintiffs' Complaint together with the costs and disbursements of this action.

Dated: New York, New York
May 3, 1974

D'AMATO, COSTELLO & SHEA
Attorneys for Defendants.
Kramer & Dillof

By: s/ George D'Amato
A Member of the Firm
Office & P. O. Address
116 John Street
New York, New York 10038

TO: GREENBAUM, WOLFE & ERNST
Attorneys for Plaintiff
437 Madison Avenue
New York, New York

KROLL, EDELMAN ELSE & WILSON
Attorneys for International Ind.
22 East 40th Street
New York, New York

ANSWER OF INTERNATIONAL FOODS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, INTERNATIONAL INDUSTRIES, INC.,
sued herein as INTERNATIONAL FOODS, A DIVISION OF
INTERNATIONAL INDUSTRIES, INC., by its attorneys,
KROLL, EDELMAN, ELSE & WILSON, answers the complaint
as follows:

1. Denies upon information and belief each
and every allegation contained in paragraph "1" of
the complaint leaving all questions of law for deter-
mination by this Court except admits upon information
and belief that the defendant, INTERNATIONAL INDUSTRIES,
INC., is a corporation organized and existing in a
state other than the State of Florida.

2. Denies upon information and belief each
and every allegation contained in paragraphs "2", "3",
"4", "5", "6", "8", "10", "11", "13", "21" and "25"
of the complaint.

3. In response to paragraph "7" of the
complaint, repeats and realleges each and every
denial interposed to each allegation contained in
paragraph "2" of the complaint with the same force

ANSWER OF INTERNATIONAL FOODS

and effect as if each denial were fully set forth herein.

4. In response to paragraph "9" of the complaint, repeats and realleges each and every denial interposed to each allegation contained in paragraphs "3" and "5" of the complaint with the same force and effect as if each denial were fully set forth herein.

5. In response to paragraphs "12" and "14" of the complaint, repeats and realleges each and every denial interposed to each allegation contained in paragraphs "2" through "11" inclusive of the complaint with the same force and effect as if each denial were fully set forth herein.

6. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "15", "16", "17", "18", "19", "20", "22", "23", "26" and "27" of the complaint.

7. In response to paragraph "24" of the complaint, repeats and realleges each and every denial interposed to each allegation contained in paragraphs "14", "15", "16", "17", "18", "19" and "20" of the

ANSWER OF INTERNATIONAL FOODS

complaint with the same force and effect as if each denial were fully set forth herein.

FOR A FIRST AFFIRMATIVE DEFENSE

8. Alleges upon information and belief that the plaintiff, MILDRED F. WOLF, was guilty of negligence which was a contributing cause of her alleged injury.

FOR A SECOND AFFIRMATIVE DEFENSE

9. Denies upon information and belief that the cause of action set forth in the first and third counts of the complaint did not accrue within the period of the Statute of Limitations next before commencement of this action.

FOR A THIRD AFFIRMATIVE DEFENSE

10. Alleges upon information and belief that the causes of action set forth in the second and third counts of the complaint did not accrue within the period of the Statute of Limitations next before commencement of this action.

ANSWER OF INTERNATIONAL FOODS

FOR A FOURTH AFFIRMATIVE DEFENSE

11. Alleges upon information and belief that the complaint fails to set forth claims upon which relief can be granted.

FOR A FIFTH AFFIRMATIVE DEFENSE

12. Alleges upon information and belief that this Court lacks jurisdiction over the person of the defendant, INTERNATIONAL INDUSTRIES, INC.

FOR A SIXTH AFFIRMATIVE DEFENSE

13. Alleges upon information and belief that this Court lacks jurisdiction of subject matter of this action.

WHEREFORE, the defendant, INTERNATIONAL INDUSTRIES, INC., demands judgment dismissing the complaint together with costs and disbursements.

KROLL, EDELMAN, ELSE & WILSON

By s/
HERBERT DICKER, A Member of
the Firm
Attorneys for Defendant,
INTERNATIONAL INDUSTRIES, INC.
22 East 40th Street
New York, New York 10016

AMENDED ANSWER OF INTERNATIONAL FOODS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, INTERNATIONAL INDUSTRIES, INC.,
sued herein as INTERNATIONAL FOODS, A DIVISION OF
INTERNATIONAL INDUSTRIES, INC., by its attorneys, KROLL,
EDELMAN, ELSER & WILSON, as its amended answer to the
complaint alleges as follows:

1. Denies upon information and belief each
and every allegation contained in paragraph "1" of
the complaint leaving all questions of law for deter-
mination by this Court except admits upon information
and belief that the defendant, INTERNATIONAL INDUSTRIES,
INC., is a corporation organized and existing in a
state other than the State of Florida.

2. Denies upon information and belief each
and every allegation contained in paragraphs "2", "3",
"4", "5", "6", "8", "10", "11", "13", "21" and "25"
of the complaint.

3. In response to paragraph "7" of the
complaint, repeats and realleges each and every denial
interposed to each allegation contained in paragraph
"2" of the complaint with the same force and effect

AMENDED ANSWER OF INTERNATIONAL FOODS

as if each denial were fully set forth herein.

4. In response to paragraph "9" of the complaint, repeats and realleges each and every denial interposed to each allegation contained in paragraphs "3" and "5" of the complaint with the same force and effect as if each denial were fully set forth herein.

5. In response to paragraphs "12" and "14" of the complaint, repeats and realleges each and every denial interposed to each allegation contained in paragraphs "2" through "11" inclusive of the complaint with the same force and effect as if each denial were fully set forth herein.

6. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "15", "16", "17", "18", "19", "20", "22", "23", "26" and "27" of the complaint.

7. In response to paragraph "24" of the complaint, repeats and realleges each and every denial interposed to each allegation contained in paragraphs "14", "15", "16", "17", "18", "19" and "20" of the complaint with the same force and effect as if each

AMENDED ANSWER OF INTERNATIONAL FOODS

denial were fully set forth herein.

FOR A FIRST AFFIRMATIVE DEFENSE

8. Alleges upon information and belief that the plaintiff, MILDRED F. WOLF, was guilty of negligence which was a contributing cause of her alleged injury.

FOR A SECOND AFFIRMATIVE DEFENSE

9. Alleges upon information and belief that the cause of action set forth in the first and third counts of the complaint did not accrue within the period of the Statute of Limitations next before commencement of this action.

FOR A THIRD AFFIRMATIVE DEFENSE

10. Alleges upon information and belief that the causes of action set forth in the second and third counts of the complaint did not accrue within the period of the Statute of Limitations next before commencement of this action.

AMENDED ANSWER OF INTERNATIONAL FOODS

FOR A FOURTH AFFIRMATIVE DEFENSE

11. Alleges upon information and belief that the complaint fails to set forth claims upon which relief can be granted.

FOR A FIFTH AFFIRMATIVE DEFENSE

12. Alleges upon information and belief that this Court lacks jurisdiction over the person of the defendant, INTERNATIONAL INDUSTRIES, INC.

FOR A SIXTH AFFIRMATIVE DEFENSE

13. Alleges upon information and belief that this Court lacks jurisdiction of subject matter of this action.

FOR A SEVENTH AFFIRMATIVE DEFENSE

14. Alleges upon information and belief that prior to the commencement of this action the claims of the plaintiffs in this action were satisfied, discharged and mitigated upon payment to them of \$7,500.

AMENDED ANSWER OF INTERNATIONAL FOODS

WHEREFORE, the defendant, INTERNATIONAL INDUSTRIES, INC., demands judgment dismissing the complaint together with costs and disbursements.

KROLL, EDELMAN, ELSEER & WILSON

By s/
HERBERT DICKER, A Member of
the Firm
Attorneys for Defendant,
INTERNATIONAL INDUSTRIES, INC.
22 East 40th Street
New York, New York 10016

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILDRED F. WOLF and HARRY WOLF,

Plaintiffs,

-against-

INTERNATIONAL FOODS, a division of
International Industries, Inc., and
CHARLES KRAMER and HENRY H. DILLOF,
individually and as co-partners
practicing law under the firm name
and style of KRAMER & DILLOF,

Defendants.

CHARLES KRAMER and HENRY H. DILLOF,
individually and as co-partners of
the firm of KRAMER & DILLOF and
KRAMER & DILLOF,

Defendants/Third
Party Plaintiffs,

-against-

EDWARD GARFIELD, RICHARD M. ADER,
JAMES L. ADLER, JR., R. ANDREW BOOSE,
JOSEPH ERDMAN, MORRIS L. ERNST,
MAURICE C. GREENBAUM, ROGER BRYANT
HUNTING, WIRTH H. KOENIG, FREDERIC S.
NATHAN, HARRIET F. PILPEL, IRWIN JAY
ROBINSON, LEO ROSEN, ALAN U. SCHWARTZ,
NANCY F. WECHSLER, JOHN A. WIENER,
HERBERT A. WOLFF, JR., HERBERT A. WOLFF,
individually and as co-partners practicing
law under the firm name and style of
GREENBAUM, WOLFF & ERNST, GREENBAUM,
WOLFF & ERNST, and ALLAN P. WHITE,

Third Party
Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavit of Anthony A. Madison, duly sworn to on the 10th day of July, 1974, the proposed Third Party Complaint, and all of the pleadings and proceedings heretofore had herein, the undersigned will bring the annexed motion on for hearing before the Hon. Dudley B. Bonsal, Room 706, at the Courthouse located at Foley Square, Borough of Manhattan, City and State of New York, on the 3rd day of September, 1974 at 9:30 a.m. or as soon thereafter as counsel may be heard.

Dated: New York, New York
July 10, 1974.

Yours, etc.

D'AMATO, COSTELLO & SHEA
Attorneys for Defendants/
Third Party Plaintiffs

BY: s/ Robert E. Meshel
A Member of the Firm
Office & P.O. Address
116 John Street
New York, New York 10038
Tel. No. 227-5189

NOTICE OF MOTION

TO: GREENBAUM, WOLFF & ERNST
Attorneys for Plaintiffs
Mildred A. Wolf and
Harry Wolf
437 Madison Avenue
New York, New York 10022

KROLL, EDELMAN, ELSE & WILSON
Attorneys for Defendant
International Foods
22 East 40 Street
New York, New York 10016

MOTION TO BRING IN
THIRD-PARTY DEFENDANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendants CHARLES KRAMER and HENRY H. DILLOF, individually and as co-partners of the firm of KRAMER & DILLOF and KRAMER & DILLOF move for leave, pursuant to F.R.C.P. Rule 14 (a), as a third-party plaintiff, to cause to be served upon EDWARD GARFIELD, RICHARD M. ADER, JAMES L. ADLER, JR., R. ANDREW BOOSE, JOSEPH ERDMAN, MORRIS L. ERNST, MAURICE C. GREENBAUM, ROGER BRYANT HUNTING, WIRTH H. KOENIG, FREDERIC S. NATHAN, HARRIET F. PILPEL, IRWIN JAY ROBINSON, LEO ROSEN, ALAN U. SCHWARTZ, NANCY F. WECHSLER, JOHN A. WIENER, HERBERT A. WOLFF, JR., HERBERT A. WOLFF, individually and as co-partners practicing law under the firm name and style of GREENBAUM, WOLFF & ERNST, GREENBAUM, WOLFF & ERNST, and ALLAN P. WHITE a Summons and Third-Party Complaint, copies of which are hereto attached as Exhibit A.

Dated: New York, New York
July 10, 1974.

MOTION TO BRING IN
THIRD-PARTY DEFENDANT

Yours, etc.

D'AMATO, COSTELLO & SHEA
Attorneys for Defendants/
Third Party Plaintiffs

BY: s/ Robert E. Meshel
A Member of the Firm
Office & P.O. Address
116 John Street
New York, New York 10038
Tel. No. 227-5189

TO: GREENBAUM, WOLFF & ERNST
Attorneys for Plaintiffs
Mildred A. Wolf and
Harry Wolf
437 Madison Avenue
New York, New York 10022

KROLL, EDELMAN, ELSE & WILSON
Attorneys for Defendant
International Foods
22 East 40 Street
New York, New York 10016

AFFIDAVIT OF ANTHONY A. MADISON
SWORN TO JULY 10, 1974 -
IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ANTHONY A. MADISON, being duly sworn,
deposes and says:

1. That he is associated with the firm of
D'AMATO, COSTELLO & SHEA, the attorneys for the defen-
dants CHARLES KRAMER and HARRY H. DILLOF, individually
and as co-partners practicing law under the firm name
and style of KRAMER & DILLOF, and KRAMER & DILLOF, and
is fully familiar with all of the facts set forth herein.

2. That this is a motion for an order per-
mitting leave to implead EDWARD GARFIELD, RICHARD M.
ADER, JAMES L. ADLER, JR., R. ANDREW BOOSE, JOSEPH
ERDMAN, MORRIS L. ERNST, MAURICE C. GREENBAUM, POBER
BRYANT HUNTING, WIRTH H. KOENIG, FREDERIC S. NATHAN,
HARRIET F. PILPEL, IRWIN JAY ROBINSON, LEO ROSEN, ALAN
U. SCHWARTZ, NANCY F. WECHSLER, JOHN A. WIENER, HERBERT
A. WOLFF, JR., HERBERT A. WOLFF, individually and as
co-partners practicing law under the firm name and

AFFIDAVIT OF ANTHONY A. MADISON
SWORN TO JULY 10, 1974 -
IN SUPPORT OF MOTION

style of GREENBAUM, WOLFF & ERNST, GREENBAUM, WOLFF & ERNST, and ALLAN P. WHITE as Third Party Defendants in the within litigation.

3. That a copy of the proposed Third Party Summons and Complaint is attached.

4. That discovery proceedings have not been completed and no Statement of Readiness has been filed.

5. That the defendants CHARLES KRAMER and HENRY H. DILLOF, and KRAMER & DOLLOF served their answer on May 3, 1974 and therefore the within Motion is timely made and necessary pursuant to Rule 14 of the Federal Rules of Civil Procedure.

6. That the plaintiffs MILDRED F. WOLF and HARRY WOLF are alleging damages as the result of alleged negligence on the part of the defendants KRAMER & DILLOF in failing to institute suit within the period prescribed by the Statute of Limitations.

7. Based upon the allegations of the Complaint and preliminary investigation, it is believed that if, in fact, plaintiffs did suffer damages as alleged in their Complaint, said damages were caused as the sole and direct result of the primary and active negligence and carelessness of the defendants EDWARD GARFIELD,

AFFIDAVIT OF ANTHONY A. MADISON
SWORN TO JULY 10, 1974 -
IN SUPPORT OF MOTION

RICHARD M. ADER, JAMES L. ADLER, JR., R. ANDREW BOOSE,
JOSEPH ERDMAN, MORRIS L. ERNST, MAURICE C. GREENBAUM,
ROGER BRYANT HUNTING, WIRTH H. KOENIG, FREDERIC S.
NATHAN, HARRIET F. PILPEL, IRWIN JAY ROBINSON, LEO
ROSEN, ALAN U. SCHWARTZ, NANCY F. WECHSLER, JOHN A.
WIENER, HERBERT A. WOLFF, JR., HERBERT A. WOLFF,
individually and as co-partners practicing law under
the firm name and style of GREENBAUM, WOLFF & ERNST,
GREENBAUM, WOLFF & ERNST in failing to assure that
the plaintiffs' case was being properly handled, and
of the defendant ALLAN P. WHITE in allowing the afore-
mentioned Statute of Limitations to run with respect
to plaintiffs' cause of action.

WHEREFORE, it is respectfully requested that
an Order be made permitting the Defendants CHARLES
KRAMER and HENRY H. DILLOF, individually and as co-
partners of the firm of KRAMER & DILLOF, and KRAMER
& DILLOF to institute a third-party action by serving
and filing a Third-Party Summons and Third-Party
Complaint in the form annexed hereto.

s/ Anthony A. Madison
ANTHONY A. MADISON

[Duly sworn to
July 10, 1974.]

EXHIBIT A - PROPOSED THIRD-PARTY SUMMONS -
ANNEXED TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

You are hereby summoned and required to serve upon D'Amato, Costello & Shea, attorneys for the defendant/third party plaintiffs, Charles Kramer and Harry H. Dillof, individually and as co-partners practicing law under the firm name and style of Kramer & Dillof, whose address is 116 John Street, New York, New York 10038; and upon Kroll, Edelman, Elser & Wilson, attorneys for defendant International Industries, Inc., an answer to the third party complaint which is hereby served upon you within twenty days after service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff, which you may but are not required to answer.

Dated: New York, New York
July 1, 1974

Clerk of Court

BY:

Deputy Clerk

(Seal of Court)

EXHIBIT A - PROPOSED THIRD-PARTY COMPLAINT -
ANNEXED TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The defendants/third party plaintiffs,
Charles Kramer and Harry H. Dillof, individually and
as co-partners practicing law under the firm name and
style of Kramer & Dillof and Kramer & Dillof, complaining
of the third party defendants, respectfully show to this
Court and allege upon information and belief, the following:

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE THIRD PARTY DEFENDANTS,
THE INDIVIDUALS PRACTICING LAW UNDER
THE FIRM NAME AND STYLE OF GREENBAUM,
WOLFF & ERNST

FIRST: At all times herein mentioned, Charles
Kramer and Henry Dillof were and still are attorneys at
law licensed to practice law in the State of New York
and were practicing law in the City, County and State
of New York, under the firm name and style of Kramer
& Dillof.

SECOND: Upon information and belief, Edward
Garfield, Richard M. Ader, James L. Adler, Jr., R.
Andrew Boose, Joseph Erdman, Morris L. Ernst, Maurice
C. Greenbaum, Roger Bryant Hunting, Wirth H. Koenig,
Frederic S. Nathan, Harriet F. Pilpel, Irwin Jay

EXHIBIT A - PROPOSED THIRD-PARTY COMPLAINT -
ANNEXED TO MOTION

Robinson, Leo Rosen, Alan U. Schwartz, Nancy F. Wechsler, John A. Wiener, Herbert A. Wolff, Jr., Herbert A. Wolff, were and still are attorneys at law duly licensed to practice law in the State of New York and were co-partners practicing law in the City, County and State of New York under the firm name and style of Greenbaum, Wolff & Ernst.

THIRD: Upon information and belief at all times herein mentioned the third party defendant Allan P. White was an attorney at law duly licensed to practice law in the State of New York, and was engaged in the private practice of law as a sole practitioner.

FOURTH: That the plaintiffs Mildred F. Wolf and Harry Wolf, among other things, alleged in their complaint that the defendants/third party plaintiffs, Kramer & Dillof were negligent in failing to institute suit within the period prescribed by Statute of Limitations.

FIFTH: Upon information and belief, the third party defendant Edward Garfield acting within the scope of his partnership agreement referred the said negligence action of Mildred F. Wolf and Harry Wolf which forms a basis for their complaint to the third party defendant Allan P. White.

EXHIBIT A - PROPOSED THIRD-PARTY COMPLAINT -
ANNEXED TO MOTION

SIXTH: That the said Edward Garfield and his co-partners had a continuing obligation upon the referral of this action to assure that it was being properly handled in their capacity as referring attorneys and were negligent in failing to do so and were otherwise careless and negligent.

SEVENTH: That in the event the said Kramer & Dillof are held to have been negligent in any manner with respect to this case by the plaintiffs, the said Kramer & Dillof shall be entitled to indemnity and/or contribution in whole or in part from the said co-partners doing business as Greenbaum, Wolff & Ernst, on the basis of the relative responsibilities of the said parties under the Common Law of this State.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE THIRD PARTY PLAINTIFFS
AGAINST THE THIRD PARTY DEFENDANT
ALLAN P. WHITE

EIGHTH: Upon information and belief the said Allan P. White was negligent in allowing the said Statute of Limitations to run with respect to the plaintiffs' cause of action.

NINTH: That in the event that the defendants/ third party plaintiffs, Kramer & Dillof shall be liable to the plaintiffs, the said Kramer & Dillof

EXHIBIT A - PROPOSED THIRD-PARTY COMPLAINT -
ANNEXED TO MOTION

➤ shall have the right of indemnity and/or contribution from the said third party defendant Allan P. White in whole or in part for the amount of any judgment on the basis of the relative responsibilities of the said parties.

WHEREFORE, it is respectfully requested that if the plaintiffs are entitled to recover from Kramer & Dillof, the said Kramer & Dillof shall have the right of indemnity and/or contribution in whole or in part from the said third party defendants on the first and second causes of action on the basis of the relative responsibilities of the said parties under the Common Law of this State.

Dated: New York, New York
July 1, 1974

Yours, etc.,

D'AMATO, COSTELLO & SHEA

BY: s/ Joseph M. Costello

A Member of the Firm

Attorneys for Defendants/
Third Party Plaintiffs
Office and P.O. Address
116 John Street
New York, N.Y. 10038
212 227 5189

AFFIDAVIT OF ROBERT BRYANT HUNTING
SWORN TO AUGUST 30, 1974 -
IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROGER BRYANT HUNTING, being duly sworn,
deposes and says:

I am a member of the firm of Greenbaum,
Wolff & Ernst, attorneys for plaintiffs in the above
action. Based upon my own preparations in this case,
as well as my conversations with and briefings by
Edward Garfield, I am fully familiar with these pro-
ceedings and I make this affirmation in opposition
to a motion made on behalf of defendants Charles
Kramer and Henry H. Dillof for an order seeking
leave, as third party plaintiffs, to serve upon
affirmant's law firm a summons and third party
complaint.

Mr. Garfield is not now nor has he ever
been a member of Greenbaum, Wolff & Ernst. He is
not now nor has he ever been a partner of this firm.
Since May 1, 1971 Mr. Garfield has been affiliated

AFFIDAVIT OF ROBERT BRYANT HUNTING
SWORN TO AUGUST 30, 1974 -
IN OPPOSITION TO MOTION

with Greenbaum, Wolff & Ernst in the capacity of counsel.

This firm's only connection with the plaintiffs is as their attorneys in the present malpractice suit. Greenbaum, Wolff & Ernst had no connection with plaintiffs with any other capacity, now or at any time in the past, and no basis exists for any third party claim against them.

On October 7, 1968, Mildred F. Wolf, a customer at The International House of Pancakes, Manhasset, New York bit into a hamburger sandwich served to her, and struck her teeth against a rusty piece of wire imbedded therein, causing her to sustain severe and permanent injuries to her teeth and mouth area.

Mr. and Mrs. Wolf are very old friends and personal clients of Mr. Garfield. After completing the initial preparatory work and making preliminary attempts at negotiation with the restaurant's claims representatives, Mr. Garfield, who is not a negligence lawyer, arranged to have the case handled by specialists in that area. On May 21, 1970, he telephoned the offices of Kramer & Dillof, who had prosecuted his various clients' negligence cases for many years, in order to

AFFIDAVIT OF ROBERT BRYANT HUNTING
SWORN TO AUGUST 30, 1974 -
IN OPPOSITION TO MOTION

arrange for the representation of Mrs. Wolf in this matter and in another, unrelated claim for damages for personal injuries to be asserted against Daitch Crystal Dairies. He spoke with a Miss Danihy who was and still is employed by Kramer & Dillof as their office manager. Miss Danihy asked that he forward his files in each of these matters to her. On May 22, 1970, both files were forwarded to the attention of Miss Danihy. Thereafter, on May 25, 1970, he forwarded some additional medical information to Miss Danihy for inclusion in the file in the companion claim to be asserted against Daitch Crystal Dairies.

Periodically thereafter, he made telephone inquiries of Miss Danihy as to the status of these matters, a practice he had followed during the many years of his relationship with Kramer & Dillof.

In the course of one of these telephone inquiries of Miss Danihy, Mr. Garfield was informed that both matters were being handled by Allan P. White, an attorney employed by Kramer & Dillof. Miss Danihy suggested that he speak with Mr. White as to the status of the matters, since Mr. White had been working on and was personally familiar with them.

AFFIDAVIT OF ROBERT BRYANT HUNTING
SWORN TO AUGUST 30, 1974 -
IN OPPOSITION TO MOTION

In March of 1971, in responding to one such request, Mr. White informed Mr. Garfield that suit had been commenced in both cases. In subsequent inquiries which Mr. Garfield made of Kramer & Dillof, he was repeatedly informed by both Miss Danihy and Mr. White that both of these matters were being actively prosecuted. In all of his conversations with Mr. White, it was Mr. Garfield's distinct understanding that Mr. White was handling the Wolf cases as an employee of Kramer & Dillof. At no time until the summer of 1973 did either Mr. White or Miss Danihy or anyone else for that matter, advise Mr. Garfield of their contention that Mr. White had been handling the Wolf cases as an independent attorney.

Defendants Kramer & Dillof now wish to assert that they had not been retained in this matter, claiming in paragraph Fifth of their proposed third party complaint that Mr. Garfield ". . . referred the said negligence action of Mildred F. Wolf and Harry Wolf which forms a basis for their complaint to the third party defendant Allan P. White." The facts, however, indicate otherwise. Mr. White's emergence as attorney for the plaintiffs was not arranged by

AFFIDAVIT OF ROBERT BRYANT HUNTING
SWORN TO AUGUST 30, 1974 -
IN OPPOSITION TO MOTION

Mr. Garfield, by anyone acting on his behalf, or by the plaintiffs. In engaging Mr. White to act as attorney of record for the plaintiffs, Kramer & Dillof did so without Mr. Garfield's knowledge, and without his authorization.

Having performed services on behalf of the plaintiffs as an employee of Kramer & Dillof insofar as the plaintiffs and Mr. Garfield were concerned, there is no basis for a third party claim by Kramer & Dillof against Mr. White. Their act in engaging him as an independent attorney while he was still on their payroll as an employee was totally unauthorized and therefore a nullity. For this reason alone, any asserted third party claim against him must also fail.

Mr. Garfield having made regular and periodic inquiries of Kramer & Dillof, through Miss Danihy, Mr. White and others, and having been advised by them that action had been commenced against the restaurant and that the matter was being prosecuted, his duty to exercise diligence, if any such duty exists under the circumstances, was fully discharged.

AFFIDAVIT OF ROBERT BRYANT HUNTING
SWORN TO AUGUST 30, 1974 -
IN OPPOSITION TO MOTION

In view of the foregoing, it is respectfully
urged that the motion be denied in all respects.

s/ Roger Bryant Hunting
ROGER BRYANT HUNTING

[Duly sworn to
August 30, 1974]

ORDER AND DECISION APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILDRED F. WOLF, et al.,

Plaintiffs,

-against-

INTERNATIONAL FOODS, et al.,

Defendants.

and a third-party action

In referring plaintiff's action to the firm of Kramer & Dillof, Mr. Garfield had the right to expect that plaintiff's action would be commenced within the period of the Statute of Limitations. Nothing in the papers suggest negligence on the part of Greenbaum, Wolff & Ernst.

Motion to bring in Greenbaum, Wolff & Ernst as a third party defendant is denied.

It is so Ordered.

November 13, 1974

s/ Dudley B. Bonsal
U.S.D.J.

F I L E D
NOV 14 1974
U.S. DISTRICT COURT
S.D. OF N.Y.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILDRED F. WOLF and HARRY WOLF,

Plaintiffs,

-against-

INTERNATIONAL FOODS, a division of
International Industries, Inc., and
CHARLES KRAMER and HENRY H. DILLOF,
individually and as co-partners
practicing law under the firm name
and style of KRAMER & DILLOF,

Defendants.

S I R S :

Notice is hereby given that the defendants Charles Kramer and Henry H. Dillof, individually and as co-partners of the firm of Kramer & Dillof and Kramer & Dillof, hereby appeal to the United States Court of Appeals for the Second Circuit, from the order of Hon. Justice Dudley B. Bonsal, entered November 14, 1974, in the U.S. District Court, Southern District of New York, denying the motion to add as third party defendants Edward Garfield, individually and as partners of the firm of Greenbaum,

NOTICE OF APPEAL

Wolff & Ernst and Greenbaum, Wolff & Ernst, from
the whole thereof and from each and every part thereof.

Dated: New York, New York
November 27, 1974

Yours, etc.,

D'AMATO, COSTELLO & SHEA
Attorneys for Defendants
Charles Kramer and Henry H.
Dillof and Kramer & Dillof

By s/ Joseph M. Costello
A Member pf the Firm
Office & P. O. Address
116 John Street
New York, N. Y. 10038
Tel. 212/791-1509

TO:

GREENBAUM, WOLFF & ERNST
Attorneys for Plaintiffs
437 Madison Avenue
New York, N. Y. 10022

KROLL, EDELMAN, ELSER & WILSON
Attorneys for Defendant International Foods
22 East 40th Street
New York, N. Y. 10016

STATE OF NEW YORK
COUNTY OF NEW YORK

DAVID BARRY being duly sworn deposes
and says: On August 22nd, 1975 I served the
within record on appeal brief appendix on Greenbaum
Wolff & Ernst the attorneys for the appellants
respondent by leaving mailing three copies thereof
at his office located at 437 Madison Avenue
New York, New York 10022

Sworn to before me
this 22nd day of
August, 1975

David Barry

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976